

NEWINGTON TOWN PLAN AND ZONING COMMISSION

June 25, 2014

Regular Meeting

Chairman Cathleen Hall called the regular meeting of the Newington Town Plan and Zoning Commission to order at 7:00 p.m. in Conference Room L101 in Newington Town Hall, 131 Cedar Street, Newington, Connecticut.

I. ROLL CALL AND SEATING OF ALTERNATES

Commissioners Present

Commissioner Frank Aieta
Commissioner Carol Anest
Commissioner Michael Camillo
Chairman Cathleen Hall
Commissioner Kenneth Leggo
Commissioner Robert Serra Sr.
Commissioner Stanley Sobieski
Commissioner Brian Andrzejewski - A

Commissioners Absent

Commissioner Richard Khentigan - A

Staff Present

Craig Minor, Town Planner

II. APPROVAL OF AGENDA

Craig Minor: One piece of business to report. Panera has asked that it be continued because they haven't been able to talk to the landlord about the lease limits. I would suggest if there is anyone who has come tonight to speak on that item, that they get identified now and leave it on the agenda, but if there is no one from the public who has come to speak, then take it off the agenda.

Chairman Hall: Is there anyone here who specifically came to speak for or against Panera this evening. It was on as a public hearing item. Seeing none, and the pleasure of the Commission will be to remove that for this evening since the applicant is not here.

Craig Minor: Right, and then also delete the site plan under New Business.

Chairman Hall: That would be article seven A. The vote was unanimously in favor of the motion, with six voting YEA.

III. PUBLIC HEARINGS

- A. **Petition 30-14: Special Exception (Section 3.15.4: Drive through Restaurant at 3120 Berlin Turnpike (Panera). Norr Architects, applicant, Newington VF LLC owner, Bryan Slonski, 325 N. LaSalle Street, Suite 500 Chicago IL contact. Continued from June 11, 2014.**

Deleted from the Agenda.

B. Petition 25-14: Zone Change (Industrial to PD) at 16 Fenn Road, Fenn Road Associates LLC, owner/applicant, Richard P. Hayes Jr. 1471 Pleasant Valley Road, Manchester, CT, contact.

Chairman Hall: Craig, do you want to start? I don't see the applicant here.

Craig Minor: When I came in this evening there was an e-mail from Mr. Hayes' attorney and the e-mail was regarding a related matter, the site plan approval. In that e-mail Attorney Shipman said that there would not be anyone at the meeting tonight, he was referring to the site plan, but I guess maybe he was referring to the whole package, the site plan and the special exception, and I don't see anybody from Mr. Hayes' organization, so I'm kind of at a loss as to what to suggest.

Chairman Hall: Well if they do come in we can always put them at the end, but at this point we will just pass over it.

Craig Minor: Yes, now you did open the hearing, so we have complied with the requirement that the hearing be opened within sixty-five days, so the sixty-five day requirement has been met. So the hearing is now open and hopefully they will come next meeting, in two weeks, or instruct us as to what their wishes are.

Chairman Hall: Can we vote to keep it open? Might as well do that.

Craig Minor: Yes.

Commissioner Sobieski moved to keep Petition 25-14 open. The motion was seconded by Commissioner Aieta. The vote was unanimously in favor of the motion, with six voting YEA.

C. Petition 26-14: Special Exception (Section 3.19.4 Fueling Station) at 16 Fenn Road, Fenn Road Associates, LLC, owner/applicant, Richard P. Hayes Jr. 1471 Pleasant Valley Road, Manchester, CT contact.

Chairman Hall: This would follow the same pattern. I suggest we keep this open.

Commissioner Sobieski moved to keep Petition 26-14 open. The motion was seconded by Commissioner Leggo. The vote was unanimously in favor of the motion, with six voting YEA.

D. Petition 37-14: Special Exception (Section 3.15.3 Outdoor Restaurant Seating at 3260 Berlin Turnpike (Plaza Azteca) Hector Angel, applicant, Kleban Newington LLC, owner. Manuel Rubio, 3260 Berlin Turnpike Newington, CT, contact.

Mr. Paguala: I am the bar manager at Plaza Azteca and both Mr. Angel and Mr. Rubio are in Brazil for the World Cup. My apologies. They asked me to attend in their absence and it's essentially a three year anniversary event that we wanted to hold at Plaza Azteca. Very similar to the Cinco de Mayo parties that we host. Our plans are exactly the same as for Cinco de Mayo. We'll have security, police and of course fencing around the property for the event.

Chairman Hall: Is this the third or the fourth anniversary?

Mr. Paguala: It is the third anniversary.

Chairman Hall: Okay, comments from the Commissioners before we got to the public?

Commissioner Aieta: Did you have any reports from the Cinco de Mayo from the police department or anybody else?

Craig Minor: The only report that I had was from the police captain who indicated that the management of Plaza Azteca did not request police coverage in a timely manner, and that in the future, it should be requested at least two weeks in advance. But that was the only comment that I had. I did not receive any comment on the event being a problem.

Commissioner Aieta: What's the date of this?

Chairman Hall: The 20th or the 27th.

Mr. Paguala: Could I say something about the request for police? Originally we didn't put any application for the police to be there in a timely manner, however the other manager at the restaurant went to the police department and requested police officers two days before it, without knowing that we had already requested, so instead of having the two officers, we ended up hiring four, so it's not, it was a miscommunication on our part between the managers, so we had originally hired two police officers for the event.

Chairman Hall: Anybody else? We will open this to the public, it is a public hearing. Anyone here wishing to speak in favor of this application? Anyone wishing to speak in opposition? Anyone wishing to speak? Seeing none, so if we have a condition that it is specific to request the police at least two weeks before, although it sounds as if they had the coverage, it was just a question of maybe not doing it in a timely manner, but,.....

Commissioner Leggo: Just one question. If this gets put into place, I mean, would we have known, would there have been any report back if there was any incidents or any problems, or do we have to actually request to find out if there were?

Craig Minor: I think if something really dramatic happened, I think the police would want us to know about it. If it was a non-event, the police might not have thought to let us know that. My plan was to contact them a month or so before next year's event, to see if there had been a problem. I did speak to the Lieutenant, and other than the scheduling, he didn't have anything to say about the event itself.

Commissioner Leggo: Okay, so we'll take nothing as good.

Craig Minor: Yes.

Mr. Paguala: Also, the request was made for either the 20th or the 27th, if at all possible, could it be approved for the 27th, so we have a little bit more time to promote the event.

Chairman Hall: I think that's your choice as to when you want to have it. It's our job to give you permission for the event, and then it's yours to schedule it for whenever you want. You had requested for the 20th or the 27th, so we know the parameters, I don't think that would be an issue. It's just when we grant, or write it up, as far as the approval, we would be specific as to the date, so if you want us to center on the 27th, then that is what we will put into the approval.

Mr. Paguala: We would prefer the 27th.

Chairman Hall: Okay. Any other comments? What is the pleasure of the Commission?

Commissioner Aieta: Close it and move it to Old Business to vote on it tonight, to get it off the schedule.

Chairman Hall: Are you prepared for that?

Craig Minor: No, but it won't take me long to put one together, since I don't think that there will be any conditions other than the prior notice requirement.

Chairman Hall: Right, and that it would specifically be the 27th.

The vote was unanimously in favor of the motion, with six voting YEA.

IV. **PUBLIC PARTICIPATION** (for items not listed on the Agenda, speakers limited to two minutes.)

None

V. **REMARKS BY COMMISSIONERS**

Commissioner Aieta: I had talked to you about the Sunshine Laundry on Pane Road, you were going to take a ride by there, have you gotten any feedback if anyone is doing anything about it?

Chairman Hall: Did you have a chance to.....

Craig Minor: No, no, I didn't. I'm sorry. I need to get out more.

Chairman Hall: Yes, I will pick you up, we'll go for a ride. What Frank is referring to is a operation down on, is it Progress Circle or Pane and Production Court I believe. I think it's Production, but anyway, and Frank and I had happened to notice that there are piles of laundry, but in speaking with Craig, he said that part of their approval was sorting, so I think, seriously, we will go down there.....

Commissioner Aieta: Who approved it?

Craig Minor: EDC, Economic Development Commission, because that is one of the town's industrial parks and EDC has some say over the businesses that go in there.

Commissioner Aieta: They waived their own regulation that says that they don't have outside storage?

Craig Minor: Well, the EDC is aware of that regulation and the way that they interpreted it was that the sorting of dirty laundry, outside, is not the storage or whatever the actual wording of the regulation is, is that this is an operation, and the EDC was okay with it.

Commissioner Aieta: And did they actually go out there and see what's there?

Craig Minor: I don't know.

Commissioner Aieta: You've got to have them go out there because this is more than sorting of laundry, a sorting operation. This is storage of, the whole parking lot is full of laundry.....

Chairman Hall: And trash bins, that's my biggest concern too.

Craig Minor: Oh, the parking lot? Because when this was discussed by the EDC the sorting was taking place in a loading bay.

Chairman Hall: Well, it's there, plus.

Craig Minor: Well, then that's different, and the EDC may not be aware of that.

Chairman Hall: We're going to have to take a trip.

Commissioner Aieta: Can we request that they take a field trip and look at it?

Craig Minor: Yes.

Commissioner Aieta: It's outrageous. I've never seen anything like it.

Craig Minor: Well, the EDC meets the first Wednesday of the month, and their agenda is being developed right now so I will suggest that they add it to their agenda.

Commissioner Aieta: Normally their regulations are stricter than ours. We have no authority over people in the Industrial Park?

Craig Minor: Well, you have the same authority that you have anywhere else. It's just that the EDC has greater authority.

Commissioner Aieta: If they are not exercising that, then we have the authority not to allow them to have outside storage. This is not a sorting operation, this is stuff that has been there for at least since we looked at it. It's been a couple of weeks.

Chairman Hall: Oh, it's been there before too. It's just that it has grown, but, we will go down there.

Craig Minor: Okay.

Chairman Hall: Anyone else have anything to bring before the Commission?

VI. MINUTES

A. June 11, 2014

Commissioner Leggo moved to accept the minutes of the June 11, 2014 regular meeting. The motion was seconded by Commissioner Sobieski. The vote was unanimously in favor of the motion, with six voting YEA.

VII. NEW BUSINESS

- A. Petition 31-14: Site Plan Approval (Drive through Restaurant) at 3120 Berlin Turnpike (Panera) Norr Architects, applicant; Newington VF LLC, owner, Bryan Slonski, 325 LaSalle Street Suite 500 Chicago, IL, contact.**

Deleted from the Agenda

VIII. OLD BUSINESS

- A. Petition 23-14: Special Exception (Section 6.2.4 Free Standing Sign) at 2551 Berlin Turnpike (Cody Plaza) Bianca Sign Inc., applicant 2551 Berlin Turnpike LLC, owner, Paul Bianca, Bianca American Signs Inc., 99 Newington Avenue, New Britain, CT, contact.**

Chairman Hall: Anybody have any questions on this before we continue?

Commissioner Aieta: Can we have a discussion first?

Chairman Hall: Sure.

Commissioner Aieta: Did they actually go out and measure the height of the sign, from the ground to the top of the existing sign?

Craig Minor: No.

Commissioner Aieta: They have not.

Craig Minor: No.

Commissioner Aieta: I suggest that we not approve it until we know that, because they are adding three feet and I think it will be over.....

Craig Minor: Then they will have perjured themselves, they will be in violation of their approval and they're not going to get any approvals in the future if they have lied to us, and they testified that the sign will be within the height requirement. To delay it for two weeks because we don't know if they were lying or not, I don't think that would be appropriate.

Commissioner Aieta: Isn't that the responsibility of the Zoning Enforcement Officer to check these things, the height and the sign requirements.

Craig Minor: Not to take a tape measure.

Commissioner Aieta: I didn't go out there and measure but just by driving by there you can almost visually see that it's, the property is oversized.

Craig Minor: The sign manufacturer will have to apply for a building permit, and they'll have to submit plans to the building department that will show how high the sign is, and if it is more than eighteen feet, then the Zoning Officer won't sign off on the building permit application. There are several checks and balances remaining in the system to prevent a sign that is too high from being built after having lied to the Commission, because that is exactly what it would involve, is them lying, and unless you think they have lied to you, then why would you hold up approval of it. Do you have reason to think they...

Commissioner Aieta: I just think that sign, the way it is now is more than fifteen feet high.

Chairman Hall: Do they go out after it is built to verify that what they applied for has been complied with?

Craig Minor: Well I can't say that Art routinely does, but I can say that he certainly would in this case if you would like him to.

Chairman Hall: I think maybe, if we have concern on that, I think that is something that we would want to have happen.

Craig Minor: That could be a condition of approval.

Commissioner Aieta: And he should check the signage on the square footage on the rest of the building. The building is oversigned.

Craig Minor: Well, that Art did do. The one thing Art did not confirm for me was the height of the sign, and that would rely on the applicant to be honest. He said yes, the sign was a certain height that was within the limits.

Commissioner Aieta: Are we going against a time limit on this?

Craig Minor: No, the hearing was only closed at the last meeting, June 11th. You have sixty-five days from when the hearing was closed to make a decision, so you have more time if you want to.

Commissioner Anest: When he submitted the elevation, did it have, it didn't even have an elevation on the plans.

Craig Minor: Correct, it didn't. It did not clearly state how tall the sign would be.

Commissioner Anest: But somebody asked him.....

Chairman Hall: Yes, Frank did, or somebody asked him.

Commissioner Anest: But he never came back, he never came with any proposal in writing or any renditions.

Craig Minor: There were lots of pictures, but there was no one drawing that showed exactly how tall the sign was going to be.

Commissioner Anest: I'm saying, he heard the discussion, I remember hearing, and I thought I had read that we had asked him to come back to show the height of the sign.

Craig Minor: That I don't think so.

Commissioner Anest: Maybe I'm mistaken, but okay.

Commissioner Aieta: Wouldn't it be normal if you were coming in to add to an existing sign that you would take the height of the existing sign to show that it's fifteen and if we add three feet it's eighteen feet, and that's the maximum limit of the sign regulations.

Craig Minor: Oh, yes and usually they do.

Commissioner Aieta: But they didn't. They didn't show it on the plan, they didn't show any height. We don't have any dimensions showing the height.

Craig Minor: Correct. Bianca Sign is not doing well by their customer, but it would be the customer, Cody Plaza who...

Commissioner Aieta: And is he taking it from the ground level to the top of the sign?

Craig Minor: That's the specific question that we asked him at the last meeting. Did he measure from the ground to the top of the existing sign, how high is that, and he said fifteen feet, and I think I said, and your new sign is three feet, so that would be a total of eighteen feet, right? And then he nodded or words to that effect, he was very clear. What he told us very clearly was, yes, it was within the regulations, so unless he lied, I suggest you go forward. But it's your decision. It doesn't have to happen tonight. You have sixty-five days from back when the hearing was closed.

Commissioner Anest: Could we, when we do the motion, can we add that we want a sketch showing the height of the new sign going up?

Craig Minor: Certainly. And you probably would want something more than just a sketch. An architectural, to scale...

Commissioner Anest: An architectural rendering to scale, the height of the sign as part of the conditions of the approval.

Commissioner Aieta: Couldn't we just hold off until the next meeting and have him provide that before we vote on it?

Chairman Hall: That might be just as easy, because it's six of one, half a dozen of the other, it's a question of two weeks.

Craig Minor: Oh, I thought what you were saying was approve with the condition that he submit to the staff...

Chairman Hall: That was an option, but now maybe if he would come back and show it to us, next time, and then we can approve it.

Craig Minor: Okay.

Chairman Hall: So we can all actually see it. Again, instead of having it be the burden administratively, we'd like to see what it is.

Craig Minor: Okay.

Chairman Hall: So we will keep this open, or continue it.

Craig Minor: Yes.

Chairman Hall: Request that he come back with a scale rendering with the dimensions clearly defined on the plan. Because what they did the last time was to take a picture and superimpose it on the plan, so that is not what we want.

Craig Minor: Very good.

IX. PETITIONS FOR PUBLIC HEARING SCHEDULING

- A. Petition 38-14: Special Exception (Section 6.2.4: Free-Standing Sign at 184 Fenn Road, Arco Sign Company applicant, Extra Space Properties Two LLC, owner Marc Cohen, 1130 S. Broad Street, Wallingford, CT, contact.

Craig Minor: This is to replace the existing free-standing sign with a new one. The message area of the sign will be slightly larger, but the pole, whatever you want to call the structure that the sign message is on top of, will also be larger, and the Zoning Enforcement Officer recommended that this get a new special permit. The Zoning Officer has confirmed that it meets the requirements mathematically.

Chairman Hall: And they actually have it listed on here, eighteen feet. But maybe we should find out what the width of that base is as well. Because again, that is just a picture that was put in there.

Craig Minor: Okay, I'll find out.

- B. Petition 39-14: Special Exception (Section 6.13: Accessory Apartment) at 38 Johnson Street, Bohdan and Debra Szaraburak, owner/applicant, Debra Szaraburak, 38 Johnson Street, Newington, CT, contact.

Craig Minor: As I said in my comments, this is an existing accessory apartment which the owners have enjoyed for a number of years, and they are now looking to sell the house and the new owner, or the prospective buyer, wants it to be an approved accessory apartment which at the moment it is not, so the owners have applied for a special exception to have it approved as an accessory apartment. On the table tonight is a site plan of the whole property, it's kind of crude, and it's rather old, which the owners got from the building department folder and they made some changes to it. It represents the overall property, and then the second page is the floor plan of the apartment itself, and I've reviewed it, and it appears to meet all of the requirements so I recommend that the hearing be scheduled for July 9th.

Chairman Hall: Any questions on that? I need to back up because we did not move the Plaza Azteca motion.

Craig Minor: I'll need a moment to draft that.

Commissioner Aieta moved a recess at 7:25 p.m., the motion was seconded by Commissioner Leggo. The vote was unanimously in favor of the motion, with six voting YEA.

The Commission came out of recess at 7:35 on the motion of Commission Sobieski, seconded by Commissioner Leggo. The vote was unanimously in favor of the motion, with six voting YEA.

VIII. OLD BUSINESS

Petition 37-14

Special Exception (Section 3.15.3: Outdoor Restaurant Seating)

3260 Berlin Turnpike (Plaza Azteca)

Hector Angel, applicant, Kleban Newington LLC, owner, Manuel Rubio, 3260 Berlin Turnpike Newington, CT, contact.

Commissioner Serra moved to approve with conditions Petition 37-14: Special Exception Section 3.15.3 Outdoor Restaurant Seating) at 3260 Berlin Turnpike (Plaza Azteca) Hector Angel applicant, Kleban Newington LLC, owner, Manual Rubio, 3260 Berlin Turnpike Newington, CT, contact.”

CONDITIONS:

1. The event shall be on July 27, 2014.
2. The applicant shall hire two or more off-duty police officers in a number as recommended by the Police Department.
3. The applicant shall request off-duty police coverage not less than two weeks before the event.

The motion was seconded by Commissioner Sobieski. The vote was unanimously in favor of the motion, with six voting YEA.

X. TOWN PLANNER REPORTS

A. Town Planner Report for June 25, 2014

Craig Minor: Zoning Enforcement Issues raised at previous TPZ meetings: none. Old Performance Bonds held by the town: I haven't done anything on this since your last meeting, actually I've done some work on a couple of the items, but nothing yet to the point of reporting on. Newington Junction TOD planning: the committee will be meeting on Friday at 2:00 p.m. in the small meeting room across the hall. Item four, revision to sign regulations: this item is on the agenda under town planner report, and I'll get to that later tonight. Status of Modern Tire appeal: I asked Attorney Jack Bradley for a summary of the legal status of the various appeals involving the auto related zoning regulations. This is his reply, with some edits by me, Craig, to recap the status of these rather complicated procedural circumstances: "Modern Tire's petition for certification to appeal the special permit case was denied by the Appellate Court on June 4, 2014. Modern Tire's petition for certification to appeal in the regulation amendment case has not yet been ruled upon. We anticipate that Modern Tire might attempt a motion for reconsideration, but that has not yet occurred. There is still no ruling on whether further appeal will be allowed in the regulation appeal case. We will contact you as soon as we receive a decision from the Appellate Court." So that is my written report.

B. Zoning Amendment (Flea Markets)

The next item I wanted to report on was a possible zoning amendment for a flea market. So, at the Commission's pleasure, I'll move on to that. To summarize this memo, it's come to my attention that the regulations do not allow flea markets and it's understood basically that if the regulations do not allow something, then it means it's prohibited. If the Commission would like, I have no objection to spending some time researching how other towns handle flea markets and draft a regulation for your consideration and then bring it to a public hearing after it is acceptable to you folks. If you would like, I'll start working on that.

Chairman Hall: What's your feeling on this, the idea of flea markets in town?

Commissioner Aieta: I'd say, save your time Mr. Planner. On just the surface of this, just to have outside, you want to talk about inside the building like they used to have at the FEM building.....

Chairman Hall: Years ago, we're dating ourselves Frank.

Commissioner Aieta: Yeah, there was one at the GEM building. They had it inside the building and they charged admission to get in, and then they had vendors come in, but to have it as an outside, on the Berlin Turnpike, in the parking lots is something that I don't think we should start, entertain, because I can just envision several of them on different lots on the turnpike.

Chairman Hall: Is that the general feeling, that it's not really something that we don't really want to encourage?

Commissioner Camillo: What about the Kiwanis?

Chairman Hall: That's different, that's a charity event and it's by a special exception, and it's only twenty weeks out of the year, it's during the spring, and then again in the fall, and all of the money they raise goes for organizations in town, Newington Food Bank, and so, it's a charity that raises money for good reason. It's not a commercial you know, bring your stuff and sell it kind of thing.

Commissioner Aieta: This was brought up because an applicant came in and they asked the question if, the people on the Berlin Turnpike, I think it's some kind of a game place.

Chairman Hall: Yes, Laser Tag and bowling.

Commissioner Aieta: Yeah, and they asked if they could do a flea market, it was going to be a for profit and it was going to be on a continuous basis every weekend. It wasn't just a one shot deal, and I think our regulations allow the Kiwanis because it is a charitable event just like any event, like the car shows and that stuff, that's supposed to be, the money generated is supposed to be charitable operations also. This is nothing that we should be entertaining.

Chairman Hall: Does that seem to be the consensus? Yes, okay fine.

Craig Minor: Okay.

C. Zoning Amendment (Temporary Signs)

Craig Minor: The next item, and I didn't include it in the packet because frankly I felt the Commissioners should see it before the general public and if I had put it in the packet, then it would be on the internet and you would be getting phone calls asking why are you changing the regs before the Commissioners had even seen it. Carol, do you want me to keep talking about it, or do you want me to turn it over to you.

Commissioner Anest: No, you're doing a good job, we'll jump in, Frank and I.

Craig Minor: Okay, I think over a year ago now at this point, an ad hoc subcommittee of P & Z Commissioners got together because the feeling was that the current temporary sign regulation is both very difficult to enforce as well as not really very user friendly for the business community that it is intended to benefit. So, after a number of

reiterations and tossing around a number of ideas and issues and discussing it with the Zoning Enforcement Officer a couple of times, and then at one point we even had the Economic Development Coordinator involved because he had some ideas of changes to the sign regulations, ultimately what the Committee came up with, not including some of the technical things that I thought we should clean up, the substance is to no longer allow temporary signs on the Berlin Turnpike, but to allow them, not without limit, but to allow them in the town center zone without the limitation of how many they can have during the course of the year. There would be limits on physically where they could go, and what hours of the day such temporary signs could be there, but they could be there basically year round. The third thing that these new regs attempt to do, in two different ways, is to restrict the use of cars parked along the Berlin Turnpike as an excuse for signage, or as a way to circumvent our sign regulations, so this contains two ways that we are going to try to get a handle on that. So that is an overview. The Commission can go through it point-by-point if the Commission wants to.

Commissioner Aieta: We had a discussion on the truck signs and the comments you made were, what was there would be grandfathered. I've been thinking about that, and I don't know if, is that something we can do or not do, I would like to have them eliminated. What's there now, there are several on the Berlin Turnpike that with this regulation would be illegal, but then you are saying they are grandfathered. I talked to the Chairman, and she had a thought on this.

Craig Minor: Well, I didn't say you can grandfather them, what I said was, they will be grandfathered. That's Zoning 101 - anything that is currently allowed under the zoning regulations, and someone is taking advantage of, if you change the regs to disallow it, or if you change the maximum building height or you change the setback or whatever the zoning regulation gets changed, anyone who is currently operating within the regs is grandfathered. If what they are doing now is not legal, the phrase grandfathered assumes that what is currently going on is legal and allowed under the zoning. So it goes without saying, that to be grandfathered you would have to be legal in the first place.

Commissioner Aieta: Is it, in your opinion, is what is out there now legal?

Craig Minor: Yes, or else we would have shut them down. We would have shut them down years ago.

Commissioner Anest: Why are they legal?

Craig Minor: Because they are not illegal. There is currently no regulation against putting a sign on the side of the truck.

Commissioner Aieta: There is no regulation for brothels either, but we don't have those in the Town of Newington.

Craig Minor: I think for other reasons.

Commissioner Aieta: You can't have it both ways, it either is or isn't, either it's a duck or it's not a duck, I mean, in one area you use that it's not a regulation, we just did it a few minutes ago on something else, it's not allowed, and then on this one you are saying they should be grandfathered. I believe that the signs that are out there now are illegal billboards. That's the interpretation that I have. They are actually billboards on the sides of the trucks, and that's now allowed. You say no, that's my interpretation.

Craig Minor: Then can I just suggest that we get a legal opinion from the Town Attorney and hopefully that will settle the question of whether they are legal or not.

Commissioner Camillo: Well if they are on trucks, they should be legally fit for the road.

Craig Minor: That's correct.

Commissioner Camillo: And if they're not, they're illegal. If they can't be registered, so they would be unregistered. You can't drive it across the parking lot, brakes could fail.....

Craig Minor: There is probably a zoning regulation that prohibits someone from having one or more unregistered junk cars, I really haven't checked that closely. Art Hanke is very familiar with that, so if Newington has a regulation that prohibits you from having a vehicle that is not in working order, and then you put a sign on the side of that vehicle, then yes, we would be able to make you remove that vehicle because it violates our rule that says that you can't have an car not in working order. But not because there is a sign on it, because there is no rule against putting a sign on the side of a vehicle.

Commissioner Sobieski: Craig, suppose one of these business establishments that has one of these, and if they are grandfathered in, sells it to somebody else, and they put another business in there, are they going to be allowed to use that?

Craig Minor: Legal non-conforming uses run with the land and legal non-conforming uses can be sold to subsequent property owners because it is a vested right. It is a legal right.

Commissioner Sobieski: So if they had a sign that said XYZ Auto Repair or something like that, that business is sold to ABC Plumbing, they could then take that sign and just change the sign on the vehicle that is out there.

Craig Minor: Legal non-conforming uses run with the land and can be sold to the next property owner.

Commissioner Anest: I thought we had discussed though, if they had a vehicle with a sign, moved the vehicle for a period of time, and then brought the vehicle back, then it would come back under our regulations.

Craig Minor: If they have one now, and they voluntarily move it, and then the new rules kick in, they would not be able to bring it back.

Commissioner Anest: If you had a registered vehicle, you would have to transfer ownership and everything on it. Now, we still have an issue with one on the Berlin Turnpike, and I'm sure it's not registered, so that's in violation as it is, and I don't know if anything is being done with that. I mean, there is a way to check to see if registrations, anybody can check on registrations.

Commissioner Aieta: Look to see if there is a license plate on it. That's one of the ways.

Commissioner Anest: I would like to get an opinion on the vehicle, I really would.

Craig Minor: Okay, that's fine. I will ask the Town Attorney for a legal opinion on whether we have any control over these signs.

Commissioner Anest: I'm going to say something, they know this is coming up, now we're going to see them plastering the Berlin Turnpike because they know this is coming up.

Commissioner Leggo: I need one of you guys to clarify, I mean what I was reading and what I just heard, I picked something up, so we are talking about if a vehicle is currently, this is being done with a vehicle right now, it's that vehicle that is being grandfathered?

Craig Minor: It's the use of the vehicle as a sign.

Commissioner Leggo: That vehicle.

Chairman Hall: Yeah, because the sign is attached to that vehicle.

Commissioner Anest: So if they go out and buy a new vehicle and attaché the sign, I don't think that would be a new

Commissioner Aieta: Let me just ask, you said the vehicle is being used as a sign. Are they calculating the size of that sign in their square foot frontage? I'm sure they're not.

Craig Minor: They should be.

Commissioner Aieta: Becker's jewelry. If you took the two sides of that truck and calculated the square footage and the other stuff he has hanging on that building, and took the length of that building, then he's in violation. And that has been there for a year, and plenty of other ones. And every week there is a new one because Rizzo Pool just put one out there, and he doesn't even put it in a parking place, he parks it across five or six parking spaces. Half in the Berlin Turnpike, and I know it's a truck that he uses for his business. So, it's a legal trucks and everything, but he's going against having it in a legal parking space, I mean, the whole idea is to try to eliminate what is out there now, not to allow some people who already have them.

Craig Minor: Well remember, this is Zoning 101, that anytime that you change the regulations, you cannot take away the rights of someone. If they are illegal we would have gotten rid of them decades ago. The problem is, they are not illegal, so the best we can do...

Commissioner Aieta: Who determined that?

Craig Minor: I will get a legal opinion from the Town Attorney and that will hopefully resolve that, but the point is, if there is something, a loophole in your regulations that you have discovered and you want to close up, you can do that, and you can close it up, and in the future nobody can exploit that loophole, but people who have been legally exploiting a loophole in the past will always be able to continue to do that. That's what non-conforming uses are, uses that were allowable under your old regs, but no longer are.

Chairman Hall: Let's go to billboards.

Craig Minor: I think you are talking about on page three, 6.2.7 exceptions: "the following types of signs are exempt from the provisions of this regulation" exempt, and it then describes the vehicle signs, so without reading it, so if a vehicle sign complies with all of these, all of this verbiage here, then it would be legal. The owner of that truck wouldn't have to get a permit from Art, but if the sign doesn't comply with this, then it's a violation and Art would enforce it.

Commissioner Anest: I understand that. I'm talking about currently, like the Becker's one. Wouldn't that be considered a temporary sign? It's on a vehicle that's not registered.

Craig Minor: All right, if I try to parse it differently, you're going to think I'm saying something that I'm not saying, and I'm going to say consistently. Zoning regulations are never retroactive, you can never...

Commissioner Anest: I know they aren't retroactive. I'm saying that that should be currently a temporary sign.

Craig Minor: I don't know how Art would interpret it.

Commissioner Anest: Okay, that's all I'm asking.

Commissioner Aieta: That's the problem, Art shouldn't be interpreting anything. We should be interpreting it.

Commissioner Anest: Well, let's find out. In the mean time, can you schedule a public hearing on this?

Craig Minor: Yes, by all means.

Commissioner Anest: Let's get this going.

Craig Minor: Because it affects property within 500 feet of the surrounding towns, it has to be sent to the regional planning agencies at least 30 days before the hearing, so the earliest you can do the hearing, well actually there are five weeks in June, so we could do this at the second meeting in July.

Chairman Hall: We're at the end of June, so then it would be the end of July, I don't think we can.....

Craig Minor: Okay, well, then let's say the first meeting in August. The legal opinion that you want me to ask the Town Attorney is, what's the question exactly?

Commissioner Aieta: If what's out there now is....we'd like to know where in the regulations it says you can have them.

Chairman Hall: Specifically the vehicle signs.

Commissioner Aieta: It doesn't say it in the regulations, so if it doesn't say it, it's illegal. Just because Art or whomever, has been the Zoning Enforcement Officer all these years doesn't enforce it doesn't mean that it's right. They just drive by, I mean, there's a lot of stuff that they drive by on the Berlin Turnpike that they don't see.....

Craig Minor: Well, as I've been telling the sub-committee, all towns wrestle with this issue, and very few if any towns have found a remedy to it. We have one that Canton came up with and we'll give it a try, but there's a reason why all towns wrestle with the same problem, because it's not an easy fix. We'll see if what Canton has come up with works. And I will ask the Town Attorney for a legal opinion as to whether the current vehicle signs are legal, the ones that are going on out there already.

Chairman Hall: All over town, not just on the Berlin Turnpike.

Craig Minor: Right.

Commissioner Anest: And we understand that people who use vehicles for their business, we're not trying to eliminate those. I think people need to know that we're not trying to do that. We're just trying to take care of the signs on the vehicles that are stationary, that haven't moved in months and months and months. That's what we are trying to really target.

Commissioner Serra: Craig, can you just get a clarification from him also that makes a difference, as Mike said, these vehicles are running, not running, registered, not registered?

Craig Minor: I'm sure his opinion will go into all of the details because those are the nuances that make this tricky.

Commissioner Serra: Thank you.

D. Partial Subdivision Map Filing

Craig Minor: The last item that I wanted to bring to your attention is a memo on the table when you came in. At the last meeting it was brought to your attention that the maps for the Packard's Way subdivision were not completely filed, only one of them was filed. It turns out that was correct; in fact, just the bare minimum of plans to meet the state statute were filed back in 2007, that's called the "record subdivision plan". The other ten sheets that show the grading, the road profile, and the topo's and all the things, for some reason, were never recorded back in 2007. I don't know why. We have our copy of the mylars. Presumably the applicant had the original set but for some reason only filed one sheet. I brought this to the applicant's attention, and I'll be working with her to resolve this.

Commissioner Anest: (Inaudible)

Craig Minor: At least two of them, I checked the other day, because the Commission asked me to send letters about the tree easement area to the lot owners so I was doing a quick search of who owns those lots. Mr. Petrucci owns one of them, and another name that I did not recognize owns one of those lots, and then Rose Colored Glasses owns the other four, the other two.

Commissioner Aieta: I think one of the lots is owned by Camarco.

Chairman Hall: It is.

Craig Minor: Okay, it was a name that wasn't familiar to me, but it was a person, it wasn't Rose Colored Glasses. LLC.

I'm saying the record map was filed and that is the bare minimum.

XI. COMMUNICATIONS

Craig Minor: I have a couple of letters just to pass along to you. No action is required by the Commission, but one of those a notice from CCROG just informing us that West Hartford is proposing to amend their regulations regarding their fee structure. That was just for your information, and a notice from DEEP that they are going to renew a permit that currently exists for Beacon Industries to continue to discharge waters in the State of Connecticut, and these are 18,000 gallons per day of treated, processed waste water. This has presumably

been going on for a number of years so this is just a formality to let the Town know that DEEO intends to renew the existing permit. That's all I have.

XII. PUBLIC PARTICIPATION (for items not listed on the Agenda; speakers limited to two minutes.)

John Bachand, 56 Maple Hill Avenue: Are the Planner's reports considered part of the Agenda?

Craig Minor: Yes,

John Bachand: Can I speak to the situation that affects me?

Chairman Hall: I think yes, it does add to our knowledge of the whole project, so yes, anything that you can add.....

John Bachand: Seems like it was getting brushed over, I didn't hear the remedy exactly, what is going to happen?

Craig Minor: I will contact the developer and resolve this oversight with her, by her.

John Bachand: And somehow getting that Certificate of Action in the land records?

Craig Minor: Yes.

John Bachand: And the sheets that have notes that benefit me.....

Craig Minor: Yes.

John Bachand: Remember you couldn't find them when we talked about the drainage, and then we found them because it was on an unsigned sheet.

Craig Minor: What I'm saying is that the mylars do exist - we have had our copy of since 2007 which should have been recorded. I'll work with the owner to get them recorded and one of those sheets includes the Certificate of Action, one of those sheets shows the easement area where the drainage goes to your property, but as you and I discussed, it's less than crystal clear that the pipe itself is supposed to be under the line which could be a property boundary or it could be a pipe, but the minutes and all of the narrative clearly shows that the developer is required to extend that stub to the edge of the property.

John Bachand: Now, the fact that that plan is not signed, will it come back and get signed?

Craig Minor: I'll work with the developer about getting the plans recorded, but one of the things is they'll have to be signed by the current Chairman.

John Bachand: There's another issue, and Craig is aware of this because we talked about this the other day, and that's a problem with your subdivision regulations. It actually is a huge hole in the subdivision regulations and it actually pertains directly to this same project where it appears that, we talked about the state statute that this plan wasn't filed within the state regulations of ninety days. I could find nothing that allows for a ninety day extension. I looked through all of the minutes of the pertinent meetings back then and could find nothing in there that any Commission granted an extension, so clearly it went way over the ninety days, it went out to six months. So the hole in your regulation is that it doesn't clarify when

the ninety days starts properly. The state regulation is very clear on it, it doesn't leave any holes at all. Yours says ninety days after the plan is returned to the applicant. But it doesn't specify, you might assume, well, that's an approved plan, but in this case, it was a plan approved with modifications, so the applicant took the plan, came back, we don't know what period of time, some time within six months, and had the Commissioner sign it, went the next day to file it, but clearly, way over the ninety days in direct violation of the state statute. What it says clearly is that any plan not so filed within the prescribed time shall become null and void. It's really clear. I think we, and I say we, because we are all in this together, I'm not pointing any fingers, we allowed this subdivision to get started with null and void plans. According to this, and if that's correct that there was no extension granted. So, I asked Craig, what takes precedent, town regulations or state regulations, and he'll address that now, so by town regulations it looks like they were fine, but by state regulations, definitely not. Town regulations are actually an indefinite period, there's no, they can come back ten years from the time that it was approved, to get the modified plans signed and then go and file them and that is clearly not the spirit of the law, the law is ninety days, very straight and very concise and very well spelled out.

Commissioner Anest: Do you have the statute?

John Bachand: The state statute, yes. It's Title 8, Chapter 126 Section 8-25.

Commissioner Anest: Thank you.

John Bachand: Subdivision of land. And I talked about this with Craig, and I said if the state statutes, I think you said the state statutes are higher than the town statutes, I think I got a legal opinion that town statutes can be more strict, but they can't be less strict, than state statutes, I don't know if that is accurate or not. But as I said, I would be awfully p.o.'d if I came in here and I follow town subdivision rules and regulations and found out that I was in violation because you wrote them wrong, or because we wrote them wrong, whatever, they left a hole there, and I was relying on the town statute, why even go to the trouble of trying to re-write those statutes, why not just say, refer to State Statute 8-25, or just copy them verbatim and put them in your book instead of trying to be clever and adding a few things here and there and deleting a few things. First of all, I want to make that clear, I'm not certain that this, that there wasn't an extension granted. I hope that maybe you could direct someone in the staff to research that to find out for sure because I think that it is critical. Because we allowed a subdivision to be built on null and void plans. What does that mean? I agree, it's too late to really do anything, but I think it should be at least acknowledged, if it is in fact, true.

Chairman Hall: Okay, thank you for the information.
Anyone else from the public wishing to speak?

Gary Bolles, 28 Burdon Lane: Good evening ladies and gentlemen. At your last meeting on the 11th of June, 2014 I questioned about a conservation easement and the fact that any changes to that easement should go before the Conservation Commission. I was challenged on that, lo and behold there was a former TPZ Commissioner watching the video that night, and he called me, and he said, you and Jeffrey Zelek, who also spoke at length, are absolutely correct. It doesn't matter whether the conservation easement was developed by maybe a Town Planner or by the Conservation Commission, any changes to that conservation easement must be referred to the Conservation Commission. I just wanted to point that out. At last night's public hearing for the supposed new community center, they are also going to be referring to you, I guess it's called an 8-24 referral because they need to get permission from the TPZ in order I guess to go forward with the building. There is also, as I

would point out to them, there are wetlands over there because as you all might remember the corner of Willard and Garfield Street a few years ago was kind of soggy in there. It was I guess a soccer field and they dumped a lot of dirt in there, and of course, as I pointed out last night, Newington was built on a swamp and it's main industry way back, I guess in the eighteen hundreds, was barrel staves and they utilized Mill Pond Park and Mill Pond itself and Mill Pond falls for the production of the barrel staves, so that is why it is very wet over there, so I just hope that they will do their due diligence on that also. Thank you very much.

Chairman Hall: Thank you Gary. Anyone else wishing to speak?

XIII. REMARKS BY COMMISSIONERS

Commissioner Anest: Can you just follow up on what Mr. Bachand said?

Craig Minor: Yes, he is correct. There is a discrepancy in the way that our regulations are written and the state statutes. It hasn't been a problem before, well, we've only had two subdivisions in the two years that I have been here. It's not anything that happens all of the time, and for the time being if we get a subdivision that is approved, I will tell the applicant that the deadline to file is ninety days from the date of approval, not what the subdivision regs might say. But at some point we probably should change the wording of the regulations.

Commissioner Aieta: Is it just to make the change, take out the language that we have and refer it to the state statute? Would you want to copy the wording of the state statute?

Craig Minor: On one hand if you simply say, "in accordance with 8-26 as amended", then you will always be right because if the law changes over time you're...the reason that towns tend not to do that but instead get clever and reproduce the wording of the statute is because you have regulations that are self contained and then applicants don't have to go searching all over. So there are two schools of thought. But that is the double-edged sword: if you phrase it and the law changes and you don't know it and change your regulations to reflect the change, you get in trouble, and maybe that is how the Newington subdivision regulation got out of sync, because maybe the statute changed over time and we didn't think about changing the regulations to reflect it. But we can talk about that when I draft the amendment for you, whether you want to simply refer to the statute or if you want to repeat the statute in the regulation. I'll have that for you at a future meeting.

Commissioner Aieta: Does that require a public hearing?

Craig Minor: Oh yeah.

Commissioner Aieta: Then when the next one comes in, it's on the books and people can read it.

Craig Minor: After speaking with Mr. Bachand about this, I went back and looked at my notes because I've been keeping a list of zoning regulations that need to be fixed when we get around to it, and I thought that I had been keeping a list of subdivision regulations, but I didn't find any; our regulations are okay as they are, but this thing obviously does need to be fixed.

Commissioner Anest: It won't help for this situation, but it will help in the future.

XIV. CLOSING REMARKS BY CHAIRMAN

Chairman Hall: I don't really have any remarks but thank you for coming tonight, we'll see each other again in July. The next meeting is July 9th.

Commissioner Aieta: Do you want to talk about the August meeting before we adjourn?

Chairman Hall: Often in August we would only have one meeting, depending on what was on the table. So at this point, I mean some times it was one meeting in July and one meeting in August because it was fairly light. What do you see coming down at this point? Do you think that would be feasible?

Craig Minor: Yes.

Chairman Hall: Because there are going to be people taking some time off, and instead of having to worry about who is going to be here and who's not.....

Craig Minor: I'm not aware of any major application that has been in the works for a while that is about to come in. I haven't had any pre-application meetings.

Chairman Hall: We don't have any time limit that is going to expire or anything like that?

Craig Minor: If we do, we'll just make sure we get it done at the meeting before or we ask the applicant for an extension to carry us over to the meeting after. As long as we know in advance, I can arrange it so that it's not a problem. So, which of the two meetings?

Chairman Hall: Well, we have July 9th and then the 23rd, I believe, right? And then it would be I believe August 13th and August 27th, those are our next dates. Do we want to have two in July, one in August, one in July, one in August?

Commissioner Anest: I wouldn't do two in a row, if we want to do July and August, we should do every other.

Commissioner Aieta: Do the first one in July and the first one in August.

Chairman Hall: Could do that, or get rid of the second two in each month.

Commissioner Leggo: Do July 9 and August 13.

Chairman Hall: Is that going to affect anybody besides me, but that's okay, because Carol is just so willing to take over when I'm not here. Okay, so we will have the first meeting of each month. July and August. Make sure any applicants who are in the hinterlands there, that, oh by the way, you can only.....

Commissioner Aieta: Could you touch base with the Hayes people, I mean that is something that has been on and off the agenda several times?

Craig Minor: Right.

Commissioner Aieta: Are they aware of what they are supposed to do at this point? They are supposed to go to the wetlands first.

Craig Minor: They are aware of what the law is. What they plan to do, I don't know.

Commissioner Aieta: As long as they know.

Craig Minor: Yes, because the Town Attorney told them.

Commissioner Aieta: Okay, because it's on and then it's off, I think it's a couple of times that we have done this.

Chairman Hall: So we probably also be prepared for these petitions that we have so far that if possible, act on them that night otherwise you would have to wait until August for approval.

Craig Minor: Right, it's the sign and the accessory apartment. I'll reinforce in the applicant's minds that they need to present a complete application so that the hearing can be closed that night, so that the Commission could act on it. If there are any loose threads, then it is going to be continued until August 13th. I'll make sure that they are aware of that.

Commissioner Aieta: Aren't these things coming in complete as a rule? I mean, you shouldn't put them on unless they are complete.

Craig Minor: The thing is, there's no "check list of twelve items" and if all twelve items are not here, it's incomplete, it's not that exact a science. Also, I don't think it's for me, as the staff, to decide whether the application is complete and withhold it from you because I don't think it's complete. I prefer to give it to you and let you decide whether it's complete and either deny it because it's incomplete, or table it because it's incomplete, or take whatever action you want, but I'm reluctant to keep it from you just because I don't think it's complete.

Commissioner Aieta: Some of the things that come in aren't even, the plans are right...

Craig Minor: I like to err on the side of letting you make that decision. I'm sitting on a couple of them right now because in my opinion they are incomplete, and the applicant agrees that they are not ready to come before you. But if the applicants want to go forward, even if I don't think it's complete, then I don't hold it back.

XV. ADJOURN

Commissioner Aieta moved to adjourn the meeting. The motion was seconded by Commissioner Serra. The meeting was adjourned at 8:20 p.m.

Respectfully submitted,

Norine Addis,
Recording Secretary